

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Crim. No. 2001-190
	)	
CAMILLE POLLARD,	)	
	)	
Defendant.	)	
	)	

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ORDER

At a hearing held on August 31, 2001, the Court ordered the parties to provide supplemental briefs on arguments raised orally by defense counsel in support of the defendant's motion to suppress her statement. The parties have now filed their briefs, which can be summarized as follows: The defendant asserts that her statement is the tainted fruit of an unconstitutional detention by U.S. Immigration and Naturalization ["INS"] officials at the permanent immigration checkpoint at the Cyril E. King Airport on St. Thomas, U.S. Virgin Islands. The United States counters that the detention was constitutional under the authority of *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).

**WHEREAS** the Supreme Court's decision in *United States v. Martinez-Fuerte* was concerned exclusively with certain regularized immigration traffic checkpoints set up within the United States near its border with Mexico, and

**WHEREAS** the Supreme Court recently emphasized in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), that the traffic stops sanctioned by the Court in *Martinez-Fuerte* served an effective border control function "made necessary by the difficulty of guarding the border's entire length," *id.* at 39, and

**WHEREAS** the Court in *Edmond* further stated that "[t]he constitutionality of checkpoint programs [such as that in *Martinez-Fuerte*] still depends on a balancing of the competing interests at stake and the effectiveness of the program," *id.* at 47, and

**WHEREAS** the record in this case thus far developed is not adequate for determining the *necessity* of the permanent immigration checkpoints set up at Cyril E. King Airport on St. Thomas or the *effectiveness* of the program, and

**WHEREAS**, as correctly noted by the United States, there is not yet any record developed regarding (1) the protocols employed by INS officials to stop and detain departing passengers at the relevant airport locations or (2) the United States' justification for using different protocols that would allow the Court to resolve the Equal Protection issues here raised, it is hereby

**ORDERED** that the hearing of August 31, 2001 is reopened.

Further hearing is scheduled for January 25, 2002 at 9:30 a.m. for purposes of developing the record in this matter. In addition to producing evidence relevant to the issues identified herein and for which the United States bears the burden of proof, the United States shall produce evidence including, but not limited to, the following:

- The set-up, procedure, and protocol utilized by INS at the permanent checkpoint at the Cyril E. King Airport on St. Thomas, both at primary inspection and secondary inspection;
- For a representative recent period, but no less than twelve consecutive months, the number of persons passing through the permanent immigration checkpoint each month at the Cyril E. King Airport on St. Thomas, the number of persons referred to secondary inspections, the number of apprehensions effected as a result of secondary inspection, and the nature of the offenses involved;
- Over the same representative period, the number and nature of other types of INS enforcement activity on St. Thomas and St. John at authorized or official immigration points of entry and otherwise, including enforcement resulting from walk-ins, yolas, and other

vessels, as compared with airport apprehensions;

- The current set-up, procedure, and protocol utilized by INS at the Luis Munoz Marin International Airport in Puerto Rico;
- The current set-up, procedure, and protocol, if any, utilized by INS to inspect persons traveling from the continental United States to the United States Virgin Islands;

To the extent that any of the above-mentioned information can be submitted in writing in advance of the hearing, the United States shall do so no later than January 18, 2002. The parties shall also be prepared to discuss the ways in which the protocol utilized by the INS as described by the district court in *Lopez v. Aran*, 649 F. Supp. 853 (D.P.R. 1986), and as partially disapproved of by the court of appeals in *Lopez v. Aran*, 844 F.2d 898 (1st Cir. 1988), is the same or different from the procedures used by the INS to detain and question the defendant here.

This hearing being necessary to the just resolution of the pending motion to suppress, the time attributable to the delay is hereby excluded from the speedy trial calculation pursuant to 18 U.S.C. § 3161(h) (1) (F).

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**ENTERED** this 13th day of December, 2001.

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
**Deputy Clerk**

**Copies to:**  
Honorable Geoffrey W. Barnard  
AUSA Kim L. Chisolm  
Douglas Beevers, Esq.  
Jennifer Coffin